

OLL85-3426/2
20 November 1985

100-13

MEMORANDUM FOR: Deputy Director for Administration
Director, Office of Security
Chairman, Security Committee
Director, Office of Information Services
Counsel/DDO
Chief, Administrative Law Division/OGC

STAT
FROM:



Chief, Legislation Division/OLL

SUBJECT: H.R. 3626, Establishing a National Commission
on Classified Information and Security Clearance
Procedures

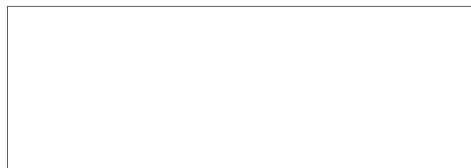
REFERENCE: Memo dated 8 November 1985 - Same Subject
(OLL 85-3426/1)

1. Attached for your review and comment is a draft letter to Chairman Brooks providing him with the Agency's views on H.R. 3626, Representative Wortley's bill establishing a National Commission on Unclassified Information and Security Clearance Procedures. This draft letter reflects various comments received from you in response to my earlier memo.

2. Because this letter must be cleared by OMB before transmittal to Chairman Brooks, I would appreciate your expeditious review of this letter and receipt of your comments by no later than COB, Friday, 22 November 1985. Your cooperation is much appreciated.

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Attachment
as stated



Central Intelligence Agency



Washington, D.C. 20505

The Honorable Jack Brooks, Chairman
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of Director Casey, I am responding to your request for Agency comments on H.R. 3626, a bill which would establish a National Commission on Classified Information and Security Clearance Procedures. While the Agency appreciates the intent of this bill, we think it both inappropriate and unnecessary for Congress to prescribe procedures for the classification and protection of national security information.

Under the provisions of H.R. 3626, a Commission would be established to make recommendations concerning Executive Branch security and classification practices and procedures. Specifically, the Commission is tasked with making recommendations concerning uniform standards and procedures for issuing all security clearances and for classifying documents. The Agency is concerned over the potential impact such a Commission could have on existing Agency security and classification programs.

First, as a matter of policy, the Executive Branch is better equipped than an independent investigative body to establish and administer criteria for the classification and declassification of national security information and to establish guidelines for access to such information. The Executive branch possesses the most timely and comprehensive information required to determine whether information should be properly classified to protect the national security from damage. More importantly, the likely effect of H.R. 3626 would be to introduce an element of statutory rigidity into an area that requires flexibility and adaptability in order to respond to the changing circumstances of intelligence activities and other national security matters. This continuing process of refinement in defining classification standards is demonstrated through the issuance of a number of Executive Orders governing classification of national security information through the years, the most recent of which is

Executive Order 12356 (April 1982). This Executive Order addresses not only the criteria for classification and declassification of national security information, but also specifically addresses restrictions on access to such information and sets forth procedures designed to safeguard national security information.

In addition, we believe that the protection of national security information is the primary constitutional responsibility of the President. We are concerned that H.R. 3626 may result in limiting the President's constitutional authority to protect intelligence and national security information and, at a minimum, would raise sensitive and difficult separation of powers questions. In our opinion, the introduction of this type of legislative rigidity into the establishment of classification and security standards adversely affects and detracts from the capabilities of the Executive Branch to exercise effective, informed and flexible classification and security management.

The Agency also believes that the establishment of this Commission is unnecessary and is duplicative of Executive Branch efforts already being undertaken in this regard. Under the terms of Executive Order 12356, the Information Security Oversight Office (ISOO), with guidance from the National Security Council, is charged with overseeing and monitoring the Executive Branch's classification program. ISOO recently convened an inter-agency group to develop recommendations for improving five areas of information security. One of the areas addressed by ISOO is overclassification, a subject proposed for investigation by the Commission. ISOO will be reporting their recommendations for improving the Executive Branch's information security program to the National Security Council later this month. In addition, concerns over the Walker espionage case led to the establishment of a Defense Department Security Review Commission to study some of these same issues. This ongoing comprehensive review of the Executive Branch's information security programs makes the creation and establishment of the proposed National Commission unnecessary in our view.

The intelligence oversight committees also have been conducting broad reviews of U.S. counterintelligence and security programs during the past year. The Senate Select Committee on Intelligence (SSCI), in fact, conducted a hearing on 20 November which specifically addressed the subjects of personnel and information security. General Stilwell, Chairman of the Defense Department Security Review Commission, and Steven Garfinkel, Director, of ISOO and head of ISOO's information security task force appeared as witnesses. In addition, Senators Nunn and Roth of the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs also have undertaken extensive investigations of the

Government's Security Clearance Program. We believe that this type of continuous consultation and cooperation through the normal intelligence and Congressional oversight processes can better accomplish the intended goals of H.R. 3626 than the creation of a National Commission in this regard.

The Agency also is concerned about the effect the establishment of this Commission might have on the DCI's statutory responsibility to determine the appropriate level of protection for intelligence sources and methods information. Given the composition of the Commission with members possessing such diverse views and differing political constituencies, any Commission recommendations or conclusions are likely to be watered down compromises. The final product of this politicized process could result in recommended Government-wide security standards and procedures that are the lowest common denominator in terms of political and security acceptability. The Agency could thus find its stringent security and classification programs, which have been specifically tailored to meet its operational needs, impaired by an effort to implement such government-wide security and classification standards.

In summary, while the Agency is concerned about and supporting various efforts to improve information security within the Executive Branch, it does not believe the establishment of a National Commission will significantly contribute to more effective security or classification programs. The steps needed in this area are primarily administrative in nature and do not require the enactment of additional legislation. The concern expressed in H.R. 3626, that too many people hold clearances and that the number must be reduced to those with a demonstrated need for access to classified information, is correct. Effecting these reductions, however, is extremely difficult to do properly. A "meat cleaver" approach; i.e., arbitrarily cutting by a certain percentage, tends to produce confusion and other undesirable consequences. Instead, a careful and diagnostic approach is called for under which the need-to-know of each clearance holder is carefully weighed and the clearances quickly removed where only marginally justified. At the same time, other initiatives must ensure that information is classified only where necessary to national security. In addition, more investigators are needed to keep up with the initial requests for clearances to do the work in a timely and cost-effective way, and to do the equally important reinvestigations needed periodically to revalidate clearances and detect the cleared persons who, over time, have become a security risk.

The above steps are illustrative of the efforts currently underway to improve personnel security procedures. We believe we know what the problems are and, given time and resources, can deal with them effectively without the formation of a National Commission.

The Office of Management and Budget has advised us that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Charles A. Briggs